



THE FUTURE OF THE DELIVERY OF LEGAL SERVICES TO LOW-INCOME PEOPLE

by Wayne Moore¹

This article is an attempt to predict the way legal services will be provided in the future. These predictions are stated in the form of six trends. Legal services will: (1) More fully utilize the human resources available to serve clients, particularly attorney and non-attorney volunteers; (2) Re-establish itself as a physical presence in rural areas, small cities, and low-income neighborhoods of urban areas, where they will serve as centers for empowering these communities; (3) Establish special delivery systems for high volume problems either where the problems occur or where the victims congregate; (4) Continue to establish special delivery systems for underserved populations (e.g. migrants, Native Americans, homeless, AIDS patients); (5) Place more emphasis on finding and addressing problems before they become resource-draining crises by conducting “active” intake and conducting “proactive” advocacy; and (6) Refine its ability to match client problems with the least expensive delivery mechanism that produces sufficient results. Many of these trends are already occurring; others are in the formative stages.

Trend 1: More fully utilize the human resources available to serve clients, particularly attorney and non-attorney volunteers.

Substantial progress has already been made in this area including the extensive use of volunteer attorneys and law students. As part of the LSC-mandated private attorney involvement requirement in the early 1980s, programs greatly expanded their use of attorneys in private practice, primarily as volunteers. This effort was expanded in the late 1980s and 1990s as programs broadened the opportunities for volunteer attorneys to include service to special populations (e.g., homeless, AIDS patients) and the provision of limited legal services (e.g. through intake, hotlines, assisted pro se).

I believe the next best opportunity in this area is the use of “active intake” to find cases appropriate for

underutilized volunteer attorneys. Most pro bono programs have some volunteers with specialties in areas in which the programs experience too few clients. The idea is to employ methods of finding clients with these problems for referral to these attorneys. This can be done by holding periodic clinics in agencies in low-income communities and publicizing them by referencing only the problems sought; people with other problems are simply referred to the program’s regular intake. Similarly these clinics can be held at community events attended by low-income people (e.g. health fairs).

The next most promising trend is what is often called “blast e-mail” which was pioneered by AARP/LCE. The predominant methodology used by pro bono programs is to formally recruit volunteer attorneys and refer cases to these attorneys, usually by telephone. In this age of e-mail, it is much more efficient to simply e-mail a brief description of cases (without information that identifies the client or divulges confidential information) to *all* attorneys practicing in the clients’ service area. This eliminates the need for formal recruitment as all attorneys in private practice receive the e-mail. In this way, the compelling nature of the cases, not program staff, are the recruitment vehicles for new volunteer attorneys. Cases which are not placed this way can still be placed by phone with attorneys who responded to past e-mails. AARP/LCE places 80% of its cases by this blast e-mail technique.

Programs also will begin to better utilize non-attorney volunteers. Past efforts at this have stalled. AARP/LCE helped pioneer the use of non-attorney volunteers as assistants to staff attorneys in the mid-1970s. While some programs serving seniors adopted this approach, the method never caught on, as it requires staff attorneys to become volunteer supervisors — a role which is foreign to most attorneys. Several programs used non-attorney volunteers to per-

form client intake (modeled after AARP/LCE), but the advent of legal hotlines replaced these volunteer intake systems. However, I believe non-attorney volunteers are ideally suited to staffing outreach offices in areas where legal services currently do not have offices. This is discussed more fully in the next section.

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Trend 2: Reestablish legal services as a physical presence in rural areas, small cities, and low-income neighborhoods of urban areas, where they serve as centers for empowering these communities.

In response to cutbacks in funding, many legal services programs have closed most of their branch offices. While this has achieved cost savings, it has come at a very dear price. Legal services programs are now invisible in much of their service areas. Operating hotlines or conducting circuit riding doesn't establish legal services as an integral part of a community in the way that maintaining an office does. People don't pass the office during their daily travels or identify a "face" with the program. For many low-income people this diminishes their trust in the program and the relevance that legal services has in their lives. However the power of the internet to deliver information and interactive documents to any neighborhood provides legal services programs with a low cost alternative to expensive branch offices. Non-attorney volunteers supervised by a paid paralegal or remotely supervised by legal services staff can help low-income clients negotiate a website and receive a wide range of information and services. We are presently testing this concept at AARP/LCE to provide the following services:

- A broad selection of legal information licensed from Nolo press, the largest publisher of legal self-help materials (much more detailed than available on Nolo's web site).
- The answers to the 90 most commonly asked questions from AARP/LCE's legal advice line; the answers are written for a 5th grade reading level.
- A wide variety of self-help brochures published by the Federal Trade Commission, AARP/LCE and others that give step-by-step guidance on how to resolve certain routine legal problems.
- A collection of model letters that address common complaints that clients have with businesses (e.g., unreturned security deposit), plus a database of addresses of the complaint departments of most major businesses worldwide. Each letter includes the names and addresses of regulatory agencies in the body of the letter to which copies will be sent. The website software allows a volunteer to generate a customized letter by entering the client's answers to questions asked by the software. We have found that well written letters sent to the correct addresses with copies sent to appropriate regulatory agencies listed in the body of the letters have over a 90% success rate.
- A small claims court complaint form with instructions on how to file the complaint in court, directions to the courthouse, a list of proof that should be brought to the small claims hearing for the most common legal problems, and a description of how the hearing will be conducted. The software will soon allow a volunteer to generate a customized complaint by entering the client's answers to questions posed by the software.
- A public benefits check-up program. By answering the software's questions, the program indicates all federal and local benefits a client may be eligible for. It also provides the location of the nearest benefits office, instructions on how to get to the office via public transportation, and a list of information/documents that clients should take with them (see www.benefitscheckup.org).
- Assistance with obtaining government services. Contains templates for requesting most government services (e.g., removal of: dead tree, abandoned car, trash) and generates an e-mail to the proper government agency. Results are monitored to identify any systemic problems (e.g., discrimination in the distribution of services).
- Assistance with obtaining vital records. Contains addresses of most agencies that house vital records. Letters can be generated requesting copies of these documents.

- A program that generates most legal documents by having clients answer a series of questions posed by the software; the answers are entered by volunteers (e.g., will, power of attorney, promissory note).
- A program that generates court pleadings for most common legal problems by having clients answer a series of questions via volunteers (e.g. uncontested divorce, name change).
- Assistance with applying for government benefits. Soon, some government agencies will allow clients to complete and file an application for benefits online (e.g. Social Security Administration, Veteran's Administration).
- Legal advice. Clients can call the AARP/LCE legal advice line from the outreach office. These calls receive priority treatment from the advice line staff.
- Assistance with completing an intake form for requesting extended services from AARP/LCE. Clients answer a series of questions relating to their legal problems. Potocols exist for over 20 different legal problems. Intake information is e-mailed to AARP/LCE headquarters for assignment to a lawyer or paralegal.
- A program that determines if and where a client can purchase their medicines at a discount.
- Referrals to other legal aid programs or community services. The website contains an extensive list of such agencies with eligibility criteria for each.

The outreach offices operate as follows: they are open two days a week from 10 am and 3 pm. Clients can walk-in; no appointments are necessary. There are two or three workstations, one for a paralegal staff person, and the others for non-attorney volunteers. A workstation consists of a table, a computer with a modem, and a telephone and two chairs: one for the paralegal/volunteer and the other for the client. There is also a printer, fax, and scanner in the office. On the walls are brochure racks containing useful legal information for clients. The paralegal/volunteer and the client sit at the computer. An intake form is completed and the client explains the purpose of the visit. If the client needs a service(s) available in the outreach

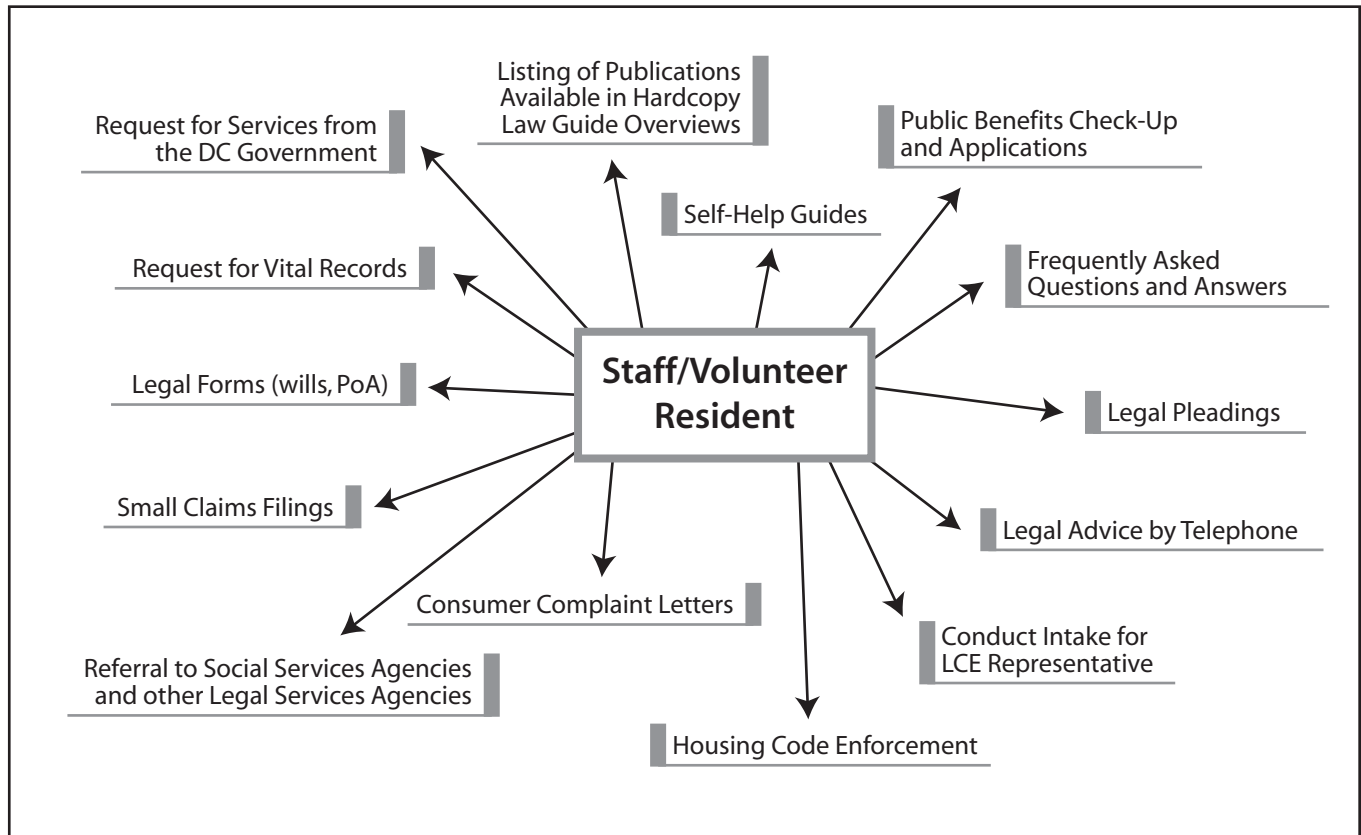
office, the paralegal/volunteer negotiates the website and delivers the service using a website instruction manual. When the software requests information from the client, the paralegal/volunteer enters it into the website. If the client needs legal information, the paralegal/volunteer can consult an index of all information available on the website or in hard copy at the office. Also the paralegal/volunteer can do a search of the website using "key words." Information on the website is printed, explained and given to the client. This ensures that it is current as material is continually being updated on the website.

If the paralegal/volunteer does not know what to do, s/he calls LCE's legal advice line for direction. If the client needs legal advice, this is provided by the advice line staff and is documented and monitored for quality in the same manner as all other advice line calls. If the advice line attorney believes the client needs additional services of AARP/LCE, an intake protocol is completed at the outreach site and is e-mailed to headquarters for assignment.

When the client leaves, s/he is told what additional steps, if any, should be taken. These are also provided in a writing, which contains a disclaimer that the office will not take any further action on the client's matter (unless an intake protocol has been submitted); the client must sign the writing acknowledging that s/he understands the disclaimer. The client is, of course, encouraged to return to the office if more help is required for their problem. We just don't want the client to expect that the outreach office has a continuing responsibility for his or her case. No conflict check is administered as no attorney-client relationship is established. If the client calls the advice line or fills out an intake protocol, a conflict check is administered before these services are provided. A diagram explaining the services provided at the outreach sites appears on the next page.

There are two rules which govern the operation of these outreach offices: (1) no legal advice is provided except through the legal advice line, and (2) once the client leaves the office, the office paralegal and volunteers have no further obligations to the client, and the client is so notified. The second rule is key because it preserves the self-help nature of the service and prevents the office from generating a caseload. If a caseload was generated at an outreach office, it would have to be closely monitored to ensure it was competently handled.

Our website software allows any legal document or pleading generated at the outreach office to be



e-mailed to our main office for legal review. The e-mail also includes the answers to all the questions that were used to generate the document or pleading. This gives us the ability to provide a legal review, modify the documents, and e-mail them back to the outreach site for signing.

The cost of the outreach offices is extremely low consisting of the part-time salary of a paralegal, telephone costs, office supplies, and an Internet provider service (offices are open only two days a week). So far, we have been able to receive free space from churches.

Eventually we plan to test the placement of these outreach offices in social service agencies using the agency's staff to supervise the volunteers who are recruited and trained by us, thereby eliminating our costs for the offices. However, in this situation, the volunteers will be required to call the legal advice line staff or other staff and review each case handled before the client leaves the outreach office.

The outreach offices offer many exciting possibilities. For example, client generated complaints for small claims or landlord/tenant actions (to address housing code violations) could be sent to the AARP/LCE's main office for filing in court. In this way 20-30 cases could be filed at the same time for the same hearing

date. Then one AARP/LCE attorney could be present on the hearing date to help all the clients. The attorney would enter into an attorney – client relationship with those who needed special help. This would reverse the typical pattern of a landlord's or collection agency's attorney filing multiple cases for the same hearing date with legal aid lawyers having to be present to defend a single action. Now the landlord's or businesses' representative would have to be present to defend a single action.

Also we plan to match each office with a volunteer lawyer or law firm to handle systemic issues. We plan to recruit low-income community leaders as volunteers or paid contractors, to serve as the eyes and ears of AARP/LCE and identify systemic problems that need to be addressed. We then plan to recruit volunteer lawyers to address these problems. We have found that we need to offer regular workshops at these outreach offices. Low-income people are so used to being on the defensive, they don't fully utilize our proactive services. We need to teach people how they can use the office to remedy a consumer problem, initiate a small claims case, get their landlord to fix their apartments, or demand city services.

Trend 3: Establish special delivery systems for high volume problems either where the problems occur or where the victims congregate.

It is clearly more efficient to address legal problems where the problems occur or where the victims congregate. This is because the clients are already there and often the problems can be addressed at an earlier stage before they become crises. Since the problems encountered are often similar, highly efficient delivery systems can be designed specifically for these problems. One example of this is the pro se programs being developed by many courts. Generally pro se programs located in the courts are far more efficient than ones conducted in legal services offices because the cost of publicity and logistics is far less and the attendance is likely to be greater. Certain high volume problems such as the need for protective orders can be cost-effectively addressed by audio/visual presentations such as the I'Can program operated by Legal Aid Society of Orange County or kiosks developed by several courts. I've always wanted to operate a mobile van outside a Social Security office where people with SSA and SSI problems go. Services rendered at SSA offices are likely to capture more problems before deadlines have been missed, such as the deadlines for preserving benefits while appealing a termination or an overpayment.

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Trend 4: Continue to establish special delivery systems for underserved populations.

Services focused on particular segments of the low-income population (i.e., AIDS patients, the homeless, Native Americans, migrant farmers) have been effective magnets for drawing funding and volunteers. The use of volunteer lawyers had plateaued in the mid-1980s until these specialized programs were developed which attracted lawyers interested in a particular population. Also some of the rare, additional federal funding for legal services has been generated by concern for a particular compelling problem or client group (e.g., victims of domestic violence). This is likely to remain an effective mechanism for garnering more financial and other forms of support.

Trend 5: Place more emphasis on finding and addressing problems before they become resource draining crises by conducting "active" intake and proactive advocacy.

As mentioned in Section II, proactive approaches can be much more cost-effective than reactive advocacy as dozens of proactive lawsuits can be filed for the same court date while programs usually defend lawsuits one at a time. Another effective strategy is to actively seek cases before they become crises. As described in Section I, active intake also can be used to find cases for underutilized volunteer attorneys.

AARP/LCE operates two "active" intake projects. Many low-income seniors in DC are losing their homes due to a failure to pay property taxes. These homes are being sold at tax sales for as little as a few hundred dollars. Many of these seniors have considerable equity in their homes. To identify these seniors, we obtain a list of them from the DC tax agency. We write, call, and visit these homes until contact is made. Most cases can be resolved through non-legal assistance, by helping incapacitated seniors pay their bills or by arranging for a home equity loan or reverse mortgage. In the past, these cases came to our attention when the client faced an eviction proceeding, requiring an enormous use of resources to defend against the eviction and overturn the tax sale.

Our eviction prevention project uses an education campaign to convince landlords and housing managers of low-income housing to contact us before evicting a senior. We match these seniors with social workers who investigate why the client is not paying rent. Most of these clients have been long-time, dependable tenants who suddenly stop paying rent. If the non-payment is due to a social problem experienced by the client, the social worker takes the necessary steps to address the problem and restore the payment of rent. LCE handles any legal aspects of the case including the establishment of a conservatorship, power of attorney or representative payee arrangement. Over 100 clients have been saved from eviction at a fraction of the cost of representing these clients in eviction proceedings. A comparable program for younger clients might be targeted at long-term tenants who have encountered a recent crisis that prevents them from paying rent (e.g. unemployment, death of a wage earner).

Trend 6: Refine the ability to match client problems with the least expensive delivery mechanism that produces adequate results.

One of the most significant advancements in the past 20 years has been the development of more cost-effective delivery systems for addressing categories of client problems. This has included hotlines or advice lines for handling advice and brief services cases, pro se delivery systems for addressing problems that clients can solve themselves with a little help, and volunteer lawyers programs for tackling problems commonly handled by the private bar such as domestic relations, consumer, and tort defense work.

I believe there are two ways that this trend can be advanced. One has to do with how programs match cases to their various delivery systems. Programs need to be far more deliberate about this. The idea is to match every case with the least expensive delivery system that is sufficient to resolve the case. The following are common delivery systems listed in order of their cost per case from least expensive to most expensive: community education, hotline, pro se, volunteer lawyers project (VLP), staff paralegals and attorneys, and systemic advocacy.² This list should form the order of priority in handling all cases. Thus the intake worker should send all clients to the hotline except those clients that clearly need more extended representation. Of the remaining clients, those capable of resolving their own matters with a little help should be scheduled for a pro se workshop. All other clients become candidates for referral to the VLP; this ensures all volunteers are fully utilized. (If the blast e-mail process is used, more cases being offered for placement will result in more cases being placed.) The program staff handle those cases that cannot be handled anywhere else.

The challenge is to know which delivery system is adequate for a particular client. To conserve costs, the client should be referred to the least expensive, viable alternative. But this means safeguards must be built into each delivery system to identify inappropriate cases and send them to the appropriate place. Thus in the case of the hotline, hotline staff should refer inappropriate cases to the least expensive, appropriate alternative. The hotline staff should tickle other cases where it is imperative that the client takes the action recommended or where it is uncertain that the client understood the advice or is capable of following the advice. These cases should be followed-up, preferably by non-attorney volunteers to conserve costs, to determine if the client followed the advice. If not, the client

can be referred to a more appropriate delivery system. With pro se delivery, all clients should be monitored until case completion, again using volunteers if possible. Those incapable of completing the process can be referred for representation by the VLP or staff. Hawaii went from completion rate of 20–30% to one of 80% by implementing a monitoring system. In the VLP, all cases should be monitored (we use non-attorney volunteers). Cases where the outcomes are inconsistent with the facts should be reviewed by staff, particularly those cases closed with advice or brief services where negotiation or litigation appeared to be the appropriate course. Again, inappropriately handled cases can be referred to another volunteer attorney or handled in-house.

The other area of potential development concerns brief service cases and referrals among legal services programs located in the same service area. Even though all of our cases are first handled by our hotline, nearly one-third of the cases closed by staff are closed with advice, brief services and referral. Thus the hotline is not closing all of these cases; another delivery system is needed to handle these cases instead of using expensive staff resources. Furthermore, legal services programs serving the same geographical areas often do not sufficiently coordinate their intakes. Some programs can handle more cases of a certain type, if they received more of them — which is a powerful incentive for better intake coordination. AARP/LCE is testing a new concept, the brief services unit, that addresses both of these concerns. This will be described in a subsequent article.

Conclusion

I am very excited about the current climate of innovation in legal services. I am convinced that we can stretch our meager resources even further through the adoption of some of these new trends in the delivery of legal services.

1 Wayne is the Co-administrator of the AARP Foundation, the Director of AARP's Legal Advocacy, and the Director of AARP Legal Counsel for the Elderly (AARP/LCE) and has been in legal services for over 27 years.

2 Note systemic advocacy can also be viewed as the least expensive, if the measurement is impact on the client community; by community education, I mean services that don't create an attorney-client relationship. I will demonstrate this order of cost effectiveness in a subsequent paper.